

Air Permits Work Group

Summary of Stakeholders Issues and Concerns

The Information Insights facilitation team interviewed the seven members of the Air Permits Work Group between September 4 and 9, and asked them to identify their major issues and concerns with ADEC's Air Permit Program and their expectations for this work group process. We also asked them several specific questions (see appendix). Everyone appeared willing to participate in this effort in good faith.

Work group expectations

Members of the work group obviously share a common goal: to develop a clear, unambiguous and workable action plan that improves ADEC's air permit program. One member suggested the work group set short-term and long-term goals that provide "feasible and reasonable options" for program improvements. Another recommended the work plan contain clear time frames for its implementation.

Some work group members were very specific in what they would like included in an action plan.

- Clear objectives and a mission statement for the division.
- A permit development process that is timely, adequate for complex permits and well funded. "The process is no good if you don't have the resource to implement and operate it."
- Recommendations and procedures so the division can better utilize contractors to address staff shortages.
- A revised fee structure and improved accounting.
- A more clearly defined permitting process, including explicit time frames for completion of each step and what types of documentation might be required when alternative fuels or methods are being considered.
- A more streamlined and businesslike approach to the permitting process, more openness to new ideas and more willingness to work with industry to achieve common goals.

State primacy

Work group members generally support keeping state primacy over the air permitting program, *provided* ADEC can run the program effectively and run it as well (or better than) the Environmental Protection Agency (EPA). One member supports state primacy because ADEC has the ability and willingness to use discretion in its permitting. "The EPA would sacrifice doing the right thing in Alaska to set a precedent for the rest of the country."

Another said state primacy is a critical issue. "We must retain state primacy even if fees double."

That level of support, however, was not universal. Dissatisfaction with the current program leaves some work group members reluctant to set state primacy as a goal. "We just want to make sure that we get the permit in a timely manner and work well with the enforcement agencies, whether state or federal."

Air Quality Program administration:

Four work group members identified specific problems with the way the air quality program is being administered. One said the mission of the air quality program is unclear and needs reexamination. "I don't know if ADEC knows what its mission is: to be reasonable and objective or to micro-manage."

Another suggested the department research what state air permit programs are working well and use them as a model for Alaska's program "The state of Florida is a prime example of what a good air permitting program is."

As the program is currently operated, ADEC is not doing its job to protect the public interest, one member commented. "ADEC should not be responsive to industry unless it is also responsive to Alaska's citizens." Another questioned whether the benefit Alaskans derive from this program is worth the expense.

Permit issuance:

Nearly all work group members listed ADEC's failure to issue permits in a timely manner as a major problem. The timely issuance of construction permits was more important to most than issuance of Title V permits. "A predictable process and timeline for issuance of construction permits is needed." One member added, however, that in all cases it is more important to have a good permit than one that is issued quickly.

A comment was made that other states are able to issue construction permits much faster than Alaska. "ADEC takes an inordinate amount of time to process construction and Title V permits." One member called for definite time frames for the issuance of construction permits. Another member expressed concern that Title V permit applications are becoming outdated and will need revision before permits can be issued.

Still another member voiced no concern with ADEC's pace in issuing operating permits. "We are comfortable working with applications until ADEC is interested. We want good permits. Timing is of no consequence."

That opinion, however, was not the norm: "We have a [DEC] that is not doing what we perceive its job to be: the issuance of air quality permits."

Another complained of long delays between applications for permit revisions and final issuance. One member said permit issuance could be faster if staff prepared completeness reviews on the entire permit application before requesting the submission of additional information. Some suggested that ADEC could reduce its workload by allowing for de minimis increases in the level of emissions before requiring modifications in Title V permits.

Work group members listed several factors hampering ADEC's permitting efforts:

- The high turnover of staff in the division.
- Staff and permittees lack guidance on how to put permits together.
- Industry won't give DEC the information it needs because it is too expensive to produce.
- ADEC lacks the technical expertise to deal with complex permits.

Permit terms and conditions

Several members said there is uncertainty about the process and development of permit conditions for both minor and major source permits, and a lack of consistency in permit conditions between facilities. One member said the permitting system should be tailored for different-sized facilities and the amount of pollution they emit. But another called for a greater effort to standardize permit conditions.

Inconsistencies between the Alaska's program for construction permitting for PSD (prevention of significant deterioration) and how the federal government and other states run their PSD programs is a concern of some members. "DEC's regulations are very general and broad and are not interpreted in a manner that is consistent with the federal program." One member questioned whether the EPA is really demanding that ADEC impose the requirements it does.

There were also complaints that Title V permits contain inconsistent and burdensome requirements, although it was acknowledged that the division has made improvements in this area. "The goal of the state program was simplicity, but it has caused more inconsistency and uncertainty, making it more complicated than the federal program." One work group member said the Title V program is just "too bulky and voluminous."

Work group members offered specific recommendations to address their concerns regarding permit conditions:

- Permit language between the division's construction permitting group and its operating group permit writers should be more consistent.
- Regulations should be referenced in permits directly rather than being rewritten or "ad libbed" by the permit writer.
- The regulations should be more specific about allowable emissions limits.
- If ADEC's discretion forms the basis of a permit, the agency shouldn't change its mind a year later just because someone new has revisited the issue.
- The state should adopt the federal PSD permit program for construction permits. This would allow ADEC and permittees to follow federal guidance documents.

Permit monitoring and reporting requirements

Most of the work group members took issue with ADEC's permit monitoring and reporting requirements. There were complaints of excess monitoring and reporting requirements as well as questions about ADEC's expertise in knowing what technical data it should require. "ADEC relies on industry to tell it what technical information it needs."

One member pointed out that the division will sometimes require more than one method of monitoring for the same source. "ADEC's air monitoring requirements are sometimes based more on academic interests than what is needed to make a reasonable estimate."

A concern was expressed that the cost of monitoring isn't manageable by small businesses. "Small businesses and utilities don't have the staff or funding to do the studies and reporting ADEC is requiring." It was suggested the division pare down its monitoring requirements to those that provide the most reasonable information with the least amount of effort by permittees. Another member recommended the division provide clear direction on when it will require additional air quality monitoring for a permit.

ADEC's ability to adequately verify and analyze industry data was also questioned. "There should be some measurements taken to verify that a company's modeling is working." There was also a call for better public access to industry technical information and assistance to help the public understand it.

Fees

All work group members expressed an opinion on ADEC's fee structure, although several said they didn't have enough information about the fees the division receives and how they are spent. Some members expressed interest in a briefing on the division's budget.

Most agree that the air permitting program needs a stable funding source, but there was little agreement about how it should be structured. One member commented, "No one wants to have their bills increased, but this is the way it needs to be." Another claimed, "fees are out of control."

Work group members had some specific recommendations for changes to the fee structure:

- Raise emission fees and charge flat fees for administrative services based on the complexity of permits.
- Increase emissions rather than administrative fees. It provides an impetus to businesses to decrease emissions.
- Increase emission fees to cover administrative costs.
- Tailor fees to the extreme ends of the bell curve—the very rich and very poor. The ability to pay should be taken into account.
- Base fees on tons of emissions. "But if there are no measurements, the estimates of the tons emitted will go down, not the emissions."
- Instead of emissions fees, tax industry on the amount of product going through their systems.

Most members would like more information about what fees pay for what services. "I don't have an understanding of how this works and I don't think anyone does." One member called for rules and regulations that everyone understands: "It would be instructive to see how the administrative and emissions fees are currently being spent. The invoices we receive for administrative fees now show what personnel generated the fees and generally what they were doing, but this does not explain the whole story of how the money is spent after it has been collected."

Staffing

Most work group members believe the division needs more staff resources to run its program efficiently and get permits issued, but several suggested the division accomplish this through the use of contractors or temporary employees. One member pointed out that there has been a lot of attrition in the division. "The problem is not enough staff."

Several expressed concern that any new hires have appropriate technical expertise. "I'm not interested in hiring a bunch of inexperienced people to issue permits faster."

Other issues of concern

There were six issues mentioned by two or fewer work group members as major concerns with the air quality program.

- The State Implementation Plan (SIP) is badly out of date and needs to be overhauled. "Overhaul of the SIP would help ADEC streamline implementation of its fundamental statutory duty to implement the air quality program." Another member commented that ADEC has too many harsh measures in the SIP and questioned why the department wrote the SIP as it did. "Why does Alaska have stipulations that other states don't have?"

- Division staff are not following management's direction. One member said ADEC staff are making management decisions and regulatory interpretations across the board on both construction and Title V permits and enforcement. "Staff are setting policy without talking to policy makers." Another member said there appears to be a real disconnect between staff and administration. "It is clear the program's administrators know they need to find a balance, but staff feel they need to be as stringent as possible at all times, no matter what."

- ADEC's billing services need improvement through a better accounting of fees. One member pointed out that the bills are hard to track. "If you spent 30 hours on my permit, what did you do during that time?"

- ADEC writes enforcement actions for minor infractions when it might make more sense to give a verbal warning or send a warning by e-mail. One member said ADEC needs to develop more discretion in its enforcement. "More would be accomplished if the department provided staff to study systems, check local air sheds to see if there is a problem and recommend changes rather than taking enforcement action."

- ADEC lacks the expertise to manage EPA technology programs and it may not be cost-effective to acquire that expertise. "This requires a commitment of resources ADEC doesn't have." It was noted that many states do not manage these technology programs.

- Concern was expressed over when and how often ADEC responds to public complaints and when a permittee should be charged for those responses. "A permittee shouldn't be charged for ADEC's time if a complaint is not substantiated. A permittee should be charged if a complaint is substantiated." It was recommended that ADEC have a policy regarding what substantiation is necessary before it follows up on a complaint. "ADEC should use more discretion in its enforcement actions."

Appendix: Interview Questions

1. How would you characterize your level of experience dealing with air permits? Is it in Alaska or elsewhere?
2. Have you worked for more than one regulated entity? On air quality issues? For a regulator? In what capacity?
3. What are the primary issues your industry sees with Alaska's air permit regime? What are the primary issues with Alaska's air permit regime for the industry you oversee?
4. Characterize the biggest problems with the air permit program that you believe need to be solved.
5. When you leave the last meeting of this work group in December with a final report, what would be the ideal work product from your standpoint?
6. Is continued state primacy for the air quality program a goal for you?
7. The following are items DEC believes may be appropriate to maintain state primacy of the air permit program. Could you share with us your views on the following?
 - a. Adequate authority for the department to pay staff to run the air quality program efficiently and to improve the program's processes.
 - b. A change in the fee structure to increase revenues for the program.
 - c. Clarity about what fees pay for what services.
 - d. Increased staffing, at least temporarily to get all air permits issued.